IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

(1) D. B. CIVIL SPECIAL APPEAL NO.153/2006
(RIICO v. Naga & Others)

(2) D. B. CIVIL SPECIAL APPEAL NO.154/2006
(RIICO v. Bada)

(3) D. B. CIVIL SPECIAL APPEAL NO.155/2006
(RIICO v. Kewda & Others)

(4) D. B. CIVIL SPECIAL APPEAL NO.156/2006
(RIICO v. Bada & Others)

(5) D. B. CIVIL SPECIAL APPEAL NO.157/2006
(RIICO v. Himta & Another)

(6) D. B. CIVIL SPECIAL APPEAL NO.158/2006
(RIICO v. Nahar Singh & Another)

(7) D. B. CIVIL SPECIAL APPEAL NO.159/2006
(RIICO v. Maga)

All the aforesaid special appeals are against the judgment dated 20-07-2006 passed by the learned Single Judge in Civil Misc. Appeals.

DATE OF JUDGMENT :::: 27.07.2007

PRESENT

HON'BLE MR. JUSTICE P.B.MAJMUDAR
HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr.V.K.Mathur, for Appellant (s).
Mr.Rajesh Choudhary, for Respondents.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

Since common question is involved in all these appeals, the same are heard and decided by this common judgment. With the consent of all the parties, the appeals are finally disposed of at the order stage.

The short question involved in these appeals is as to what should be the date of Notification under Section 4 (1) of Land Acquisition Act, 1894 (for short, "the Act of 1894") to be taken into consideration for the purpose of determination of additional amount under Section 23 (1-A) under the Act of 1894.

Brief facts given rise to the above question are that a Notification for acquiring the land was issued under Section 4 (1) of the Act of 1894 on 20/06/1992, before publication of notification in official gazette on 27.8.1992. After publication of notification in Gazette on 27.8.1992, the public notice was issued in two daily newspapers – one in the month of September, 1992 and second on 24.12.1992.

While determining additional amount under Section 23 (1-A) under the Act of 1894, Land Acquisition Officer considered

date of last notification under Section 4 (1) to be relevant and accordingly, calculated the amount of interest. Non-appellant challenged the order of the Land Acquisition Officer on the ground that the first date of notification under Section 4 (1) of the Act of 1894 should have been taken into consideration. The Civil Court accepted the plea of the non-appellant and issued direction for calculation of additional amount under Section 23 (1-A) of the Act of 1894 from the date of notification published in Gazette i.e., from 27.8.1992.

Aggrieved by the order of the Civil Court, appellants preferred civil misc. appeals, which were rejected by the learned Single Judge by a detailed judgment. Aggrieved by the same, these special appeals have been preferred. It is averred that last date of notification under Section 4 (1) should be taken into consideration for award of additional amount as per the provisions of Section 4 (1) which is clear in its term. The relevant provisions are quoted hereunder:-

> **"Section 4. Publication of preliminary notification and powers of officers thereupon -(1)** Whenever it appears to the (appropriate Government) the land in any locality (is needed or) is likely to be needed for any public purpose (or for a Company) a notification to that effect shall be published in the Official Gazette (and in two daily newspapers circulating in that locality of which at least in the original language) and the Collector shall cause

public notice of the substance of such notification to be given at convenient places in the safe locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of their publication of their notification)."

"Section 23. Matters to be considered in determining compensation. (1-A) In addition to the market- value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per cent annum on such market-value for the period commencing on and from the date of the publication of the notification under Section 4, Sub-Section 1 in respect of such land to the date of the award of the Collector or the date of taking possession of the land whichever is earlier.

Explanation.- In computing the period referred to in this Sub-Section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded."

The counsel for the appellant laid his emphasis on the language of Section 4 (1) to show that even as per the language of the provision, it is the last date of notification, which is required to be considered for the purpose of calculation of additional amount.

During the course of arguments, a specific question was asked to the learned counsel for the appellant as to for determination of market value of the land, under Section 23(1) which date of notification under Section 4 (1) was taken into

consideration by the Land Acquisition Officer. Counsel appearing for the appellant fairly submitted that the date of first notification, i.e., 27.8.1992 was taken into consideration and market value under Section 23(1) of the Act of 1894 was determined accordingly. Learned counsel for the appellant fairly accepted that there cannot be two dates for determination of market value under Section 23 (1) and additional amount under Section 23 (1-A) of the Act of 1894. Thus, the direction given by the Civil Court as upheld by the learned Single Judge cannot be questioned in the present case, looking to the fact that market value was determined by the Land Acquisition Officer after considering first date of notification of Section 4 (1) as their cannot be two different dates for the purpose determination of market value and additional amount under Section 23(1) and 23 (1-A) respectively. Counsel for the appellant, however, requested that the legal issue involved in the present appeals may be kept open for consideration in another appropriate case while affirming the direction of payment of additional amount after calculating the same from 27.8.1992.

Looking to the request made by the counsel for the appellant, the directions given by the Civil Court and affirmed by the learned Single Judge to calculate and pay the amount of additional amount to the non-appellants after making calculation of interest from the date of publication of notification in Gazette

on 27.8.1992,needs no interference, however, we keep legal issue involved in these appeals open for consideration in appropriate case as to which of the date of notification under Section 4 (1) is to be taken into consideration for determination of additional amount under Section 23 (1-A) of the Act of 1894.

We are further not going in the larger issue of maintainability of appeals in view of the provision of Section 100-A of the CPC as the appeals are otherwise deserves to be dismissed for the reasons given above. Thus, all these appeals are dismissed for the reasons mentioned. However, the legal issue involved in these appeals is kept open for consideration in the appropriate case. Parties to bear their own cost.

(MUNISHWAR NATH BHANDARI), J. (P.B.MAJMUDAR), J.

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